and which, if imposed, would amount to some form of punishment being inflicted on the offender. Accordingly, to inflict any of these conditions on an offender, who has not been convicted of an offence, would be repugnant to the accepted notion of justice. It is to be observed that section 294(1) of the Criminal Procedure Code applies to the circumstances in which a person, not being a youthful offender, has been convicted of any offence punishable with imprisonment. The effect of the bond ordered under this section is to suspend the sentence of imprisonment and it is, therefore, not objectionable to include any of the conditions set out in section 294A, punitive though they may be in effect. For the reasons stated I agree with the learned deputy public prosecutor that the conditions in section 294A are not applicable to a bond ordered under section 173A. Accordingly there will be an order that the two additional conditions imposed be omitted from the bond.

Order accordingly.

SIM LIM INVESTMENTS LTD. v. ATTORNEY-GENERAL

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Chua J.) September 3, 1968]

[Singapore—Federal Court Civil Appeal No. Y60 of 1967]

Income Tax — Statutory income — Dividend — Subsidiary company declaring dividend — Whether parent company entitled to treat dividend declared and paid in subsequent year as having been derived in a preceeding year — Accounting practice — Income Tax Ordinance (Cap. 166), sections 29, 35(7A) and 44(4).

This was an appeal from the decision of the High Court reported in [1968] 1 M.L.J. 116.

A subsidiary company declared a dividend in favour of its parent company in March 8, 1965. The parent company included such dividend in its assets of the year ending December 31, 1964. The comptroller treated the dividend as having been derived in the year in which it was declared and paid out in 1965. Winslow J. held that the statutory income of the company in respect of dividends is the full amount of the income from such dividend for the year preceding the year of assessment. The appellants appealed.

Held, dismissing the appeal: the learned trial judge was right in holding that there can be no distinction between the case of a shareholder who is an individual and the case of a shareholder who is itself a company holding shares in another company, and in both cases the statutory income from the dividends is the full amount of the income from the dividends for the year preceding the year of assessment.

FEDERAL COURT.

G. S. Hill for the appellant.

Sat Pal Khattar (State Counsel) for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): The appellants, Sim Lim Investments Ltd. are a holding company of a group of companies known as the Sim Lim Group, one of them being Sim Lim Company Ltd., a wholly trading subsidiary of the parent company.

On the 8th March, 1965, Sim Lim Company Ltd. declared a dividend of $1,192,500 pursuant to a resolution passed at an ordinary general meeting held on the 6th March, 1965.

On the 17th August, 1965, Sim Lim Investments Ltd., the parent company, declared to its shareholders a gross dividend from which tax was deducted under section 44(1) of the Income Tax Ordinance amounting in the aggregate to a total sum of $324,465.

In the accounts of the parent company, the dividend declared by Sim Lim Company Ltd. on the 8th March, 1965, was included by its auditors as income of the parent company for the year ended 31st December, 1964 although this dividend was paid by the subsidiary and received by the parent company in 1965. The Comptroller of Income Tax in his computation, however, treated the dividend declared in March, 1965, as income of the parent company for the basis period ending 31st December, 1965 and accordingly falling to be taxed in the year of assessment 1966.

The parent company on the other hand contended that this dividend declared by its subsidiary in March 1965 has been correctly treated by it in its own computation for income tax as its income for the basis period ending 31st December, 1964, thus falling to be assessed in the year of assessment 1965.

If the comptroller is right, this appeal fails. If Sim Lim Investments Ltd. is right, this appeal succeeds.

Winslow J. in the court below held that the comptroller was right and that on the true construction of section 35(7A) the dividend in question, for the purposes of ascertaining the statutory income of the appellants for the year of assessment 1965, was rightly excluded.

Section 35(7A) reads as follows:—

> "The statutory income of any person for any year of assessment in respect of dividends shall be the full amount of the income therefrom for the year preceding the year of assessment notwithstanding that the source of such income is not possessed by him during the year of assessment."

It is conceded that so far as an individual is concerned his statutory income for any year of assessment in respect of dividends shall be the full amount of the income from dividends declared or paid to him during the year preceding the year of assessment.

Winslow J. held that it would be erroneous and contrary to common sense to give a different meaning where a shareholder is not an individual

but a company, having regard to the other provisions of the Ordinance relating to dividends, namely sections 10(1)(d), 29, 44 and 46 and accordingly came to the conclusion that the statutory income of any person (whether an individual or a company) for any year of assessment in respect of dividends is the full amount of income from dividends already paid during the year preceding the year of assessment.

The appellants contend that Winslow J. was wrong. First, they say that the comptroller himself, and properly so, assessed the appellants for the year of assessment 1965 under section 10(1)(a) on the basis of profits from business. That being so, the appellants' accounts for the year ended 31st December 1964 are conclusive for the purposes of ascertaining the income for the year of assessment 1965 as such accounts were properly drawn up in accordance with current principles of commercial accounting.

In our opinion this point has no validity. It is common ground that the appellants are a holding company and not a trading company and the evidence confirms this position. The income in question is income from a dividend it received from its shareholding in a subsidiary company. In our opinion, the provisions of the charging section, section 10, clearly require the relevant assessment to be made on the basis of income from dividends under sub-paragraph (d) of subsection (1) and not on the basis of income derived from profits from a trade or business under sub-paragraph (a).

The real question then is whether on the true construction of section 35(7A) in ascertaining the statutory income of the appellants for the year of assessment 1965 the dividend that it received from its subsidiary in March 1965 can be said to be its income from dividends for the year preceding the year of assessment, i.e. the year ending 31st December, 1964.

It is submitted that as the term "income" is not defined in the Ordinance one must start with a figure based on normal commercial accounting practice, subject to express statutory modification, to calculate the income of a tax payer and that on the evidence it has been shown that in drawing up the accounts of a holding company it is a proper commercial method of accounting to anticipate dividends even though the same have not been declared as distinct from the case of an individual shareholder in a company where the date of declaration or of receipt of the dividend would be conclusive of the date on which the income arose for tax purposes.

In our judgment, this submission is untenable. To ascertain the statutory income for tax purposes for any year of assessment the Ordinance provides by section 35(1) that it shall be the full amount of the income for the year preceding the year of assessment and in the case of income from dividends, section 35(7A) specifically provides that it shall be the full amount of the income from dividends for the year preceding the year of assessment. For the purposes of the present appeal, it is conceded that an individual shareholder's income arises under section 35(7A) when the dividend is declared or paid to him by the company and in our opinion, so far as income from dividends is concerned, there can be no distinction between the case of a shareholder who is an individual and the case of a shareholder who is itself a company holding shares in another company. We agree with Winslow J. that to hold otherwise would be erroneous and contrary to common sense and would be to disregard the other provisions of the Ordinance which relate to dividends.

It may well be that good accountancy practice requires that in order to produce group accounts in the case of a chain of companies, the accounts of the various companies in the group must be consistent *inter se*, for which purpose it may be necessary to anticipate in the accounts of the companies, the probable receipts of dividends from other companies in the group although these receipts are not yet the subject matter of declarations of dividends. All that this means is that to do so is good accountancy practice as it will show the "commercial profit" for the accounting year but so far as the Ordinance is concerned it does not in our opinion show that any such anticipated dividends are income which arose in the accounting year. What we are concerned with in the present case is not the method of ascertaining the profits for the year preceding the year of assessment, in which case good accountancy practice may come into play, but the ascertainment of the full amount of the income from dividends for the year preceding the year of assessment, in which case, in our view, good accountancy practice can play no part.

For all these reasons we would dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Rodyk & Davidson.*

HAJI ARIFFIN v. GOVERNMENT OF PAHANG

[F.C. (Barakbah L.P., Suffian and MacIntyre F.JJ.) September 5, 1968]

[K.L. — Federal Court Civil Appeal No. X.2 of 1968]

Administrative Law — Termination of service of Kathi — Appointment terminable under terms of contract by one month's notice — Termination of appointment — Whether this was in fact a dismissal for alleged misconduct — No opportunity to be heard — General Orders, reg. 36 — Federal Constitution, art. 135(2).